

USSN 10/058,969
Art unit 3652
Examiner Michael Kwon

"include an auger for drilling a hole into which the telephone pole is placed" ([0002], lines 3-4). Hensler's digger derrick is directed to "moving the pole guide assembly of a digger derrick truck between an operative and inoperative position" ([0006], lines 2-4). Hensler has no concern with the manner in which the hole is created. He is content to adopt the conventional means, an auger mounted on the boom, as being adequate for his purpose.

Likewise, Marazzo et al. seeks an improved method and apparatus relating to "material transfer arrangements, and more particularly, to movement of materials at excavation sites under vacuum pressure" (col. 1, lines 7-9). Furthermore, the excavations contemplated by Marazzo et al. are identified as occurring "during pipe replacement or similar operations. In such operations, it is necessary to extract soil from a hole to obtain access to underground apparatus such as a pipe" (col. 1, lines 13-16). While the Marazzo may not preclude the creation of holes for positioning utility poles, this does not seem to be in the foreground of what is contemplated in Marazzo et al. Rather, that invention is focussed entirely on an improved hydrovac unit.

Therefore, with neither reference even considering, let alone suggesting, the desirability of combining a pole positioning unit with a hydrovac unit, it is unreasonable for the examiner to combine the references to arrive at the invention claimed by the Applicant. Moreover, with Hensler being contemporary with the Applicant's invention, it suggests that no ordinary worker skilled in the art at the time of the Applicant's invention has considered combining a pole positioning unit and a hydrovac unit, except for the Applicant.

With regard to the rejection under 35 USC 112, First paragraph, the Applicant submits that no clarification of Claim 3, line 6 is required. As noted by the Applicant on page 2, paragraph 08, lines 3-5, "A conventional hydraulic power supply 18 is mounted on the front of the chassis 12, at the bumper 20. The hydraulic power supply 18 is powered by the engine 16 in conventional fashion." The examiner suggests that "IC engines and hydraulic cylinders are independent and distinct sources of power" (page 2, Office Action). However, this is not true. Hydraulic cylinders are never a source of power, but merely contain pistons that respond to pressure exerted upon them, usually

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by way of a pump, which is in turn powered by a power source such as an internal combustion engine. Applicant submits that anyone skilled in the art would know that "hydraulic power supply" as referred to in the application refers to the entire system, not just hydraulic cylinders. Regardless of the referent, either requires a power supply from an external source, such as an internal combustion engine, to operate the hydraulic oil pump, something so obvious that it does not merit mention in the application.

Therefore, these rejections appear to be ill-founded. Reconsideration and withdrawal of the rejections, and allowance of the application is respectfully requested.

Respectfully submitted, signed and certified as being faxed to the USPTO on:

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(Date)

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